

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

ELECTRIC LIGHTWAVE, LLC,)	DOCKET UT-063040
)	
Petitioner,)	
)	ORDER 03
v.)	
)	INITIAL ORDER APPROVING
QWEST CORPORATION,)	AND ADOPTING SETTLEMENT
)	AGREEMENT; GRANTING
Respondent.)	JOINT MOTION TO DISMISS
)	COMPLAINT
.....)	

1 *Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. If this Initial Order becomes final certain disputes between Electric Lightwave, LLC and Qwest concerning compensation for ISP-bound traffic and VNXX traffic will be resolved by the terms of the parties’ settlement agreement, Electric Lightwave, LLC’s complaint will be dismissed, and this docket will be closed.*

MEMORANDUM

2 **PROCEEDINGS:** Electric Lightwave, LLC., (ELI) filed with the Washington Utilities and Transportation Commission (Commission) on May 31, 2006, a petition for enforcement of interconnection agreement with Qwest Corporation (Qwest). The petition states that Qwest breached the terms of the parties’ interconnection agreement by withholding payments for reciprocal compensation to ELI on the basis that reciprocal compensation was not due to ELI on traffic that Qwest deemed to be “Virtual NXX” (VNXX) traffic. ELI seeks damages. ELI’s complaint, supplemented by the affidavit of Dennis Robins, asserts Qwest withheld approximately \$268,643 in reciprocal compensation payments between January, 2005 and the end of May, 2006.

3 Qwest answered ELI’s complaint on June 16, 2006, admitting some allegations, denying others and reserving counterclaims.

4 The Commission convened a prehearing conference in this docket at Olympia, Washington on June 26, 2006, before Administrative Law Judge C. Robert Wallis.¹ The Commission entered a prehearing order on June 30, 2006, establishing a procedural schedule for prefiled testimony and setting a date for hearing.

5 Qwest, on behalf of both parties, filed a Settlement Agreement, Narrative Supporting Settlement Agreement, and Joint Motion To Approve Settlement Agreement and Dismiss Complaint on August 17, 2006. The parties requested that the Commission suspend the procedural schedule pending consideration of the proposed settlement.

6 **APPEARANCES:** Charles L. Best, Associate General Counsel, Electric Lightwave, LLC, Vancouver, Washington, represents Complainant ELI. Lisa Anderl, Associate General Counsel, Qwest Corporation, Seattle, Washington, represents Respondent Qwest. Neither Public Counsel nor Commission Staff appeared in this proceeding.

7 **JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND DISMISS COMPLAINT:** ELI and Qwest filed their Settlement Agreement, Narrative, and Joint Motion on August 17, 2006, as previously mentioned. The essential exchange of consideration described in the Settlement Agreement involves the payment of an agreed amount by Qwest to ELI for reciprocal compensation related to the disputed traffic between December 2004 and May 2006.² In exchange ELI agrees to dismiss its complaint. The Settlement Agreement includes a full, mutual release of claims.

8 The payment and mutual release of claims, however, are subject to a caveat. The parties state in their agreement that their settlement was prompted in significant part by recent Commission decisions in factually and legally similar cases in Dockets UT-053036 and UT-053039. The Settlement Agreement provides that Qwest's payment to ELI does not waive Qwest's "right to a prompt refund, should Qwest obtain a

¹ Judge Wallis substituted for Administrative Law Judge Dennis J. Moss due to a conflict in Judge Moss's schedule.

² The parties assert that the amount of money paid by Qwest to ELI is entitled to confidential status under the protective order entered in this docket on June 30, 2006, or pursuant to RCW 80.04.095. The Commission makes no determination and expresses no opinion concerning the parties' assertion that confidential treatment is warranted.

reversal . . . of the [Commission] orders in Dockets UT-053039 and UT-053039.” If Qwest obtains a reversal in either of the referenced matters, “neither ELI nor Qwest will continue to be bound by this Agreement.”³

- 9 **DISCUSSION AND DETERMINATION:** The Commission agrees with the parties that it is in the public interest to approve and adopt their Settlement Agreement. Given the relative early stage of this litigation and considering the avenues open for further administrative litigation and review, and judicial appeal, there would be a continuing expenditure of the parties’ and the Commission’s resources absent settlement. Avoiding the potential expenditure of time and money by the parties and by the Commission is a worthwhile goal and is in the public interest. Moreover, the settlement should promote a more positive business relationship between the parties and, more broadly, contribute to a positive business environment in Washington. This, too, is in the public interest.

³ The Settlement Agreement states:

Qwest has claimed that certain traffic that ELI exchanged with Qwest was not traffic that was appropriate for exchange under the Interconnection Agreements because it was bound for end users not located in the same local calling area as the Qwest end user originating the call, which traffic Qwest has referred to as, "VNXX Traffic (the "Disputed Traffic") . . .

Qwest initiated a dispute with ELI on January 27, 2005, in a letter in which Qwest claimed that it was not required to exchange VNXX Traffic with ELI and therefore would not pay reciprocal compensation for the Disputed Traffic . . .

ELI has disputed Qwest's claims and stated that the Disputed Traffic was entitled to be exchanged under the Interconnection Agreements and that Qwest was required to pay ELI reciprocal compensation under the terms of the Interconnection Agreement . . .

Qwest also initiated similar disputes with other parties, which then were litigated before the Washington Utilities and Transportation Commission ("WUTC"), which issued orders stating that Qwest was required to pay reciprocal compensation for VNXX Traffic bound for ISPs in Dockets UT-053036 and UT-053039 (the "Enforcement Orders") and ELI initiated its own petition for enforcement of its interconnection agreement before the WUTC with similar claims in Docket No. UT-063040 . . .

As a result of the recent WUTC decisions, ELI and Qwest have agreed to settle the outstanding issues between ELI and Qwest regarding the Disputed Traffic, including payment of certain amounts by Qwest to ELI for reciprocal compensation regarding the Disputed Traffic to Qwest, and dismiss ELI’s pending complaint before the WUTC.

- 10 Finally, the settlement appears to be consistent with recent Commission decisions in factually similar cases. It is reasonable and appropriate that the parties' agreement follows what the Commission has determined to be the correct application of law to the facts in such cases.
- 11 The Commission concludes that the parties' Settlement Agreement should be approved and adopted as a full resolution of the issues pending in this proceeding.

ORDER

THE COMMISSION ORDERS that

- 12 (1) The Settlement Agreement filed by the parties to this proceeding on August 17, 2006, is appended to and incorporated by this reference into the body of this Order.
- 13 (2) The Settlement Agreement appended to this Order is approved. The Commission adopts the Settlement Agreement as a full resolution of the issues pending in this proceeding.
- 14 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective August 28, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you

agree with this initial order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a final order any party may file a Petition To Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and eight copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

**APPENDIX
SETTLEMENT AGREEMENT
(Redacted Version)**